



PORT OF BELLINGHAM
1801 Roeder Avenue
Bellingham, WA 98225
(360) 676-2500

DOCUMENT TITLE:

Interlocal Agreement By and Between Public Utility District No. 1 of Whatcom County and the Port of Bellingham for the Purpose Development of Strategic Plans.

REFERENCE NUMBER OF DOCUMENTS ASSIGNED OR RELEASED:

N/A

GRANTORS:

Public Utility District No. 1 of Whatcom County (PUD)
Port of Bellingham (Port)

GRANTEES:

Port of Bellingham (Port)
Public Utility District No. 1 of Whatcom County (PUD)

ABBREVIATED LEGAL DESCRIPTION:

N/A

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER:

N/A

INTERLOCAL AGREEMENT

This Interlocal Agreement (hereafter the "**Agreement**") is made and entered into this 20th day of November, 2018, by and between the Public Utility District No. 1 of Whatcom County (hereafter "the **PUD**") and the Port of Bellingham (hereafter "the **Port**").

WHEREAS, many areas of Whatcom County are unserved or underserved by infrastructure for industrial and agricultural development, including telecommunications and broadband services and other infrastructure requirements; and

WHEREAS, the Port and the PUD are seeking to form a cooperative relationship to support the development of a strategic countywide infrastructure plan that includes analysis and strategies that plans for the efficient utilization and expansion of existing infrastructure and strategic planning for the future development of new infrastructure in support of industrial, general economic, and agricultural development; and

WHEREAS, the Port and the PUD are seeking to form a cooperative relationship to plan and support the development of a countywide, open access fiber optic network throughout Whatcom County that will, in conjunction with private telecommunications providers, deliver reliable, affordable, high speed internet access to serve residential, business, public safety, governmental, and educational needs; and

WHEREAS, Chapter 39.34, Revised Code of Washington provides for cooperation between local governmental entities through contractual agreement.

NOW, THEREFORE, it is agreed by and between the Port and the PUD as follows:

- 1. Purpose-Development of Strategic Plans.** The Port and the PUD agree to cooperatively develop the following strategic plans (collectively referred to herein as the "Strategic Plans"):
 - a. A strategic plan for developing infrastructure to serve and facilitate the development of industrial zoned land including but not limited to a master infrastructure plan for the development of the Cherry Point Industrial Area, and to serve agricultural development in Whatcom County (this strategic plan is referred to herein as the "Infrastructure Plan").
 - b. A strategic plan for the development of publicly owned, open access fiber backbone throughout rural Whatcom County (this strategic plan is referred to herein as the "Public Fiber Strategic Plan").
- 2. Administration.** The Port is designated administrator pursuant to this Agreement. Administrative duties include management of contracts, receipts and dispersal of funds, and communication to the PUD representatives. The Port will follow Port policies with regard to contracting for services or consultants. No new or separate legal or administrative entity is created to administer the provisions of this agreement. The persons responsible for administration of this Agreement shall be the Port's Executive Director and the PUD's General Manager or their designees. The contact information for these individuals is listed under Section 11.a, below.

3. Scope of Consultant Services/Consultant Services Agreement/Work Orders. The Port and the PUD, following the Port's process for selection of a consultant, shall jointly select and approve a consultant to prepare the draft Strategic Plans (the "Consultant"). The Port shall execute a professional services agreement with the Consultant on terms and conditions approved by the Port and the PUD, which shall not be unreasonably withheld or delayed (the "Services Agreement"). The Services Agreement shall provide for the development and approval of specific tasks for the Consultant to perform that are to be approved by both the Port and the PUD in advance and in writing prior to the Consultant commencing any work or tasks ("Work Order"). Each such Work Order shall include the proposed scope of services/tasks, a schedule for completion and fee estimates including a not to exceed amount for each task in the Work Order. The Port shall not authorize the Consultant to proceed with any work under a Work Order until written approval of such Work Order has been approved by the PUD. All Work Orders must be approved in advance and in writing by the Commission and/or General Manager of the PUD and by the Commission and/or Executive Director of the Port.

a. The Services Agreement shall expressly provide that the Strategic Plans and all drafts, work product, data, information, analysis or similar that are obtained, developed, prepared or produced by the Consultant in relation to the Strategic Plans ("Plan Material") shall be work for hire, shall be jointly owned by the Port and the PUD, and the Consultant shall have no rights or ownership interest in any Plan Material.

4. Payments.

a. *Grants.* The Port and the PUD will jointly pursue local, state and federal grant funding to support the planning and future implementation of infrastructure and an open access fiber backbone throughout Whatcom County. Any such grant funding shall be allocated equally amongst the Parties.

b. *Budgets.* The Port and the PUD will include an Infrastructure Strategic Plan and a Public Fiber Strategic Plan line item in their respective 2019 budgets to fund the net costs for the development of the Strategic Plans in the following amounts:

Line Item	Total Budget Amount	Port	PUD
Infrastructure Strategic Plan	\$100,000	\$50,000	\$50,000
Public Fiber Strategic Plan	\$ 75,000	\$60,000	\$15,000

c. *Port of Bellingham Responsibilities:* The Port hereby agrees to fund and pay the Consultant in accordance with the Services Agreement and perform such work as set forth in this Agreement.

d. *PUD Responsibilities:* PUD shall reimburse the Port in an amount not to exceed the agreed upon amount allocated to the PUD for the costs of providing and performing the services stated under Sections I and III above, based on the actual Consultant fees and expenses pertaining to the Work, and perform such work as set forth in this Agreement.

- e. *Cost Overruns.* In the event that the Port and the PUD determine in advance that the costs of performing the Work will exceed the budgetary constraints set forth in Section 4.b, then the Port and the PUD agree that they shall reach agreement to determine cost overrun shares of the cost of any such cost overruns.
- f. *Payment:* All payments by the PUD to the Port under this Agreement are considered reimbursement for the Work rendered hereunder pursuant to the Services Agreement. Each request for payment herein is to be submitted in the usual form of a claim for services rendered, which claim shall be supported by detailed documentation of the services actually performed so as to comply with auditing requirements. Payment shall be upon approved claims and in accordance with customary procedures. The PUD will compensate the Port for services rendered within thirty (30) days following receipt of a detailed invoice, provided that the Port is not in violation of the terms and conditions of the Agreement and the PUD has not provided the Port with written notice that it has rejected some or all of the items in such invoice.

5. Treatment of Assets and Property. No fixed assets or personal or real property are anticipated to be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement, except that the Strategic Plans, and all drafts, work product, data, information, analysis or similar produced in relation to the Strategic Plans shall be deemed the property of both of the parties to this agreement even if stored and retained by the Port or the Consultant.

6. Term of Agreement. This Agreement shall be effective on the date of such recording ("Effective Date") and shall terminate on December 31, 2020.

7. Termination. The Port or the PUD may withdraw from this Agreement by providing thirty (30) days written notice to the other parties. However, any party withdrawing shall remain responsible for its prorated share of any payments due to the Port for contracts executed prior to the receipt of the notice by the Port.

8. Assignment. The Agreement shall not be assigned by either party to any third party without the prior written consent of the other party, which consent may be withheld for any reason or no reason.

9. Release and Indemnify. To the extent permitted by law, each Party agrees to release, defend, indemnify, and hold harmless the other Party, its officers, agents, employees, and representatives (Port/PUD) from all claims, actions, suits losses, harm liabilities, damages, costs and expenses, including but not limited to, reasonable attorney's fees, arising out of the negligent acts or omissions arising in connection with performance of this Agreement. Where negligence by both Parties is concurrent and contributes to a claim, the Parties shall be responsible and liable in proportion to the degree of their own negligence. Nothing in this Agreement shall be construed to preclude either Party from pursuing any remedy against a third party.

10. Public Records Act. All records received by Port or the PUD, pursuant to this Agreement, shall be a public record and therefore subject to the Public Records Act.

11. Miscellaneous Provisions.

a. *Notices.* Any notice, request, authorization, direction or other communication as required under this Agreement shall be given in writing and be delivered in person or by first class United States mail, properly addressed and stamped with the required postage, to the intended recipient as follows:

Port of Bellingham
1801 Roeder Avenue
Bellingham, WA 98225
Attention: Rob Fix, Executive Director

Public Utility District No. 1 of Whatcom County
1705 Trigg Road/Post Office Box 2308
Ferndale, WA 98248
Attention: Stephan Jilk, General Manager

Either Party may change its address specified above by giving the other Party notice of such change in accordance with this Section. All notices, requests and authorization of directions or other communications by a Party shall be deemed delivered when mailed as provide in this Section or personally delivered to the other party.

b. *Governmental Authority.* This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities having jurisdiction over this Agreement, and/or the Parties, or either of them.

c. *No Partnership.* This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities of neither Party. Furthermore, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

d. *Nonwaiver.* The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

e. *Entire Agreement.* This Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous agreements and understandings between the parties with respect to such subject matter. This Agreement may be amended only by a subsequent writing signed by both parties and expressly stating the intention to amend this Agreement.

f. *No Specified Third-Party Beneficiaries.* Except as otherwise specifically provided in this Agreement, there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any rights or interest on anyone other than the Parties, their respective successors, assigns and legal representatives.

g. *Amendment.* No change, amendment or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

h. *Implementation.* Each Party shall take such action (including, but not limited to, the execution, acknowledgement and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

i. *Invalid Provision.* The invalidity or unenforceability of Party provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

j. *Applicable Law.* This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be pre-empted by the laws of the United States of America.

k. *Venue.* The venue of any litigation arising out of this Agreement shall be in Whatcom County, State of Washington, or such other place as both Parties may agree to in writing.

l. *Interpretation and Fair Construction of Contract.* This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and shall not be construed either for or against either Party as the drafter.

m. *Recordation:* Upon execution of this Agreement, the Part shall file a copy of it with the office of its County Auditor pursuant to the requirements of RCW 39.34, PROVIDED, that any delay in effecting compliance with this section shall not affect the stated term, expiration or renewal dates hereof.

Signatures on the following page

IN WITNESS WHEREOF, the Port and the PUD have executed this Agreement as of the day and year according to the signatures below.

EXECUTED THIS 20 day of November, 2018.

PORT OF BELLINGHAM:



Rob Fix
Executive Director

PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY:



Stephan Jilk
General Manager